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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,475	08/29/2001	Laurent Palanchon	1200.518	5342

7590 10/27/2003
Valeo Climate Control Corp.
Valeo Engine Cooling Corp.
4100 North atlantic Blvd.
Auburn Hills, MI 48326

EXAMINER

FLANIGAN, ALLEN J

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,475

Applicant(s)

PALANCHON, LAURENT

Examiner

Allen J. Flanigan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 8-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As amended, claim 4 is indefinite because it is not clear which dimension of the internal passage lies between the claimed range (height? length? Width?). At least, the word "dimension" should appear after "internal".

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al.

Please see the comments made in regard to the above rejection in the previous Office action. The applicants' arguments in regard to the anticipation rejection are addressed below.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yamamoto et al.

Please see the comments made in regard to the above rejection in the previous Office action. The applicants' arguments in regard to the anticipation rejection are addressed below.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okamoto et al. in view of Yamamoto et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 9/12/03 have been fully considered but they are not persuasive.

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Applicants have not pointed to a structural limitation claimed which is not found in Yamamoto et al. Arguments regarding the intended use of the claimed device might carry weight if a method of using were the subject matter claimed, but the applicant cannot in effect repatent a known structure merely by specifying a new use un contemplated by the reference. Applicants insist that the term "evaporator" is "not term [sic] of intended use". With all due respect, this is precisely what it is, much like the term "radiator". It indicates that the applicant intends to employ his claimed device in an application where a fluid will undergo evaporation provided the appropriate temperatures and pressures of fluids flowing within and without the exchanger in use are provided. At most, such recitations require the

anticipatory device be capable of such use; clearly, the heat exchanger of Yamamoto et al. is capable of evaporating a liquid.

Regarding the obviousness rejection, applicants argue that the "Okamoto et al. '612 disclosure is not analogous with fins where the exchange is with ambient air". It is true that Okamoto et al. show internal fins 19 between the plates, but they also show airside fins at 3.

Air is air, and the efficiency of airside fins is simply not affected by the type of fluid flowing on the other side of the tube wall.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone

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number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

A handwritten signature in black ink, reading "allen J. Flanigan". The signature is written in a cursive, flowing style.

Allen J. Flanigan
Primary Examiner
Art Unit 3753

AJF